

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

4:23CV3099

MEMORANDUM AND ORDER

Before the Court is Plaintiff's Response, [Filing No. 29](#), to this Court's December 14, 2023, Memorandum and Order granting Plaintiff through and until January 16, 2024, to file an amended complaint that clearly states a claim or claims upon which relief may be granted (the "December 14 Order"), [Filing No. 28](#). The December 14 Order was issued after the Eighth Circuit denied Plaintiff's appeal, [Filing No. 26](#), appealing the decision of this Court's initial review of Plaintiff's Complaint (the "Initial Review Order"), [Filing No. 20](#). In the Initial Review Order, this Court found that summary dismissal was appropriate under 28 U.S.C. § 1915(e)(2) but allowed Plaintiff 30 days in which to file an amended complaint that clearly stated a claim or claims upon which relief may be granted.¹ [Id.](#)

¹ In its Initial Review Order, Plaintiff was also warned that failure to file an amended complaint consistent with the Initial Review would result in dismissal of his case without prejudice and without further notice. [Filing No. 20 at 7](#).

The totality of Plaintiff's Response is as follows: "we stand on Complaint as written." [Filing No. 29](#). The Court construes Plaintiff's Response as declining to accept this Court's prior offers to amend and instead seeking to proceed under the original Complaint.

As this Court previously found that the entire Complaint was subject to dismissal without amendment due to Plaintiff's failure to sufficiently plead both factual and jurisdictional allegations, [Filing No. 20 at 4–6](#), and as Plaintiff specifically declines filing an amended complaint in his Response, for the reasons set forth in the Initial Review Order and the December 14 Order, see [Filing Nos. 20](#) and [28](#), this matter must be dismissed in its entirety. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

IT IS THEREFORE ORDERED that: This matter is dismissed without prejudice as Plaintiff's Complaint failed to state a claim against any defendant upon which relief may be granted and as Plaintiff failed to comply with this Court's Initial Review and December 14 Orders. [Filing Nos. 20](#) and [28](#). The Court will enter judgment by a separate document.

Dated this 31st day of January, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Court